

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WALTER GONZALEZ, EDER	:	CIVIL ACTION
MORALES and LUIS ALBERTO	:	
ROBLERO	:	
	:	
v.	:	
	:	
BUSTLETON SERVICES, INC.	:	NO. 08-4703

**MEMORANDUM AND ORDER OF JUDGMENT**

ELIZABETH T. HEY  
UNITED STATES MAGISTRATE JUDGE

May 18, 2010

In a Memorandum and Order dated May 5, 2010, I granted Plaintiffs' request for prejudgment interest, and asked the parties to provide details of the damages to which they stipulated. The parties have now provided the figures to allow for the calculation of prejudgment interest. Based on the calculations that follow, I will enter judgment in the following amounts; for Walter Gonzalez, \$ 5,012.44 including \$ 517.34 in prejudgment interest, for Eder Morales, \$ 6,254.75 including \$ 711.20 in prejudgment interest, and for Alberto Roblero, \$ 7,228.49 including \$ 773.39 in prejudgment interest. Plaintiffs' counsel shall have 14 days from the date of the entry of judgment to file a petition for attorneys' fees.<sup>1</sup>

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<sup>1</sup>Defendant shall have 14 days to file a response and Plaintiffs may file a reply within 7 days. The parties are directed to address the effect of Defendant's Rule 68 Offer of Judgment as to each Plaintiff in their submissions.

## **I. BASIS FOR THE CALCULATION**

After a bench trial, as explained in my earlier filed Findings of Fact and Conclusions of Law, I found that Plaintiffs were entitled to damages for several categories of wage violations: credited overtime from September 30, 2006 through September 30, 2008 under the Fair Labor Standards Act (“FLSA”) for which no prejudgment interest is due because I imposed liquidated damages under the FLSA; credited overtime from September 30, 2005 through September 30, 2006 under Pennsylvania’s Minimum Wage Act (“PMWA”) for which prejudgment interest will be calculated using Pennsylvania’s statutory rate; uncompensated morning and evening time due under the FLSA from September 30, 2006 through September 30, 2008 for which prejudgment interest will be calculated using the federal post judgment interest rate; and uncompensated morning and evening time from September 30, 2005 through September 30, 2006 under the PMWA which will be calculated using Pennsylvania’s statutory rate.

Based on my Findings and Conclusions, the parties stipulated to the damages attributable to each of the categories of wage violations. Due to the uncertainty of the dates on which the uncompensated morning and evening time was earned, I originally intended on dividing the amount attributable to the uncompensated morning and evening time in thirds, accounting for the three years prior to the filing of suit. However, reviewing the records, it is clear that Plaintiffs had no income from Defendant after August 26, 2007. Therefore, I will divide the amount attributable to uncompensated

morning and evening time in half, attributing half to the period from September 30, 2005 through September 30, 2006, and half to the period from September 30, 2006, through September 30, 2007.

When utilizing Pennsylvania's statutory rate for the violations of the PMWA, I will calculate interest at a simple six percent. See 41 P.S. § 202 (setting six percent simple interest as the statutory annual rate). When calculating interest for the FLSA violations, for which liquidated damages have not been awarded, I will be guided by the rate set out in the post judgment interest statute, compounding the interest annually. See Sun Ship, Inc. v. Matson Navigation Co., 785 F.2d 59, 63 (3d Cir. 1986) (in awarding prejudgment interest the district court "may be guided by the rate set out in 28 U.S.C. § 1961").<sup>2</sup>

## **II. CALCULATION**

Based on the amounts stipulated to by counsel, the calculations of interest are as follows.

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<sup>2</sup>The weekly average of the 1-year constant maturity Treasury Bill rate for the week ending September 28, 2007 was 4.05%. For the week ending September 26, 2008, the rate was 1.95%. For the week ending September 25, 2009, the rate was .41%. The current rate is .39%.

**A. Gonzalez**

		Interest
Credited OT (FMLA)		
September 30, 2006 - September 30, 2008	\$509.83	0
Liquidated Damages for Credited OT (FMLA)		
September 30, 2006 - September 30, 2008	\$509.83	0
Credited OT (PMWA - Interest calculated at simple 6%) <sup>3</sup>		
September 30, 2005 - September 30, 2006	$\$219.11 * .06 * 3.67 =$	\$ 48.25
Uncompensated morning/evening (PMWA - Interest calculated at simple 6%)		
September 30, 2005 - September 30, 2006	$\$1,628.16 * .06 * 3.67$	\$ 358.52
Uncompensated morning/evening (FLSA - Interest using §1961)		
September 30, 2006 - September 2007	\$1,628.17	
Compounding Interest		
9/30/06 - 9/30/07	$\$1,628.17 * 4.05\% = \$ 65.94$	
9/30/07 - 9/30/08	$(\$ 1,628.17 + \$ 65.94)$	
	$\$1,694.11 * 1.95\% = \$ 33.04$	
9/30/08 - 9/30/09	$(\$ 1,694.11 + \$ 33.04)$	
	$\$ 1,727.15 * .41\% = \$ 7.08$	
9/30/09 - 5/18/10	$(\$ 1,727.15 + \$ 7.08)$	
	$\$ 1,734.23 * .39\% = \$6.76 * 8/12 = \$ 4.51^4$	
	$\$ 65.94 + \$ 33.04 + \$ 7.08 + \$ 4.51 =$	\$ 110.57
Totals for Gonzalez:		
Damages (including liquidated)	\$ 4,495.10	
Prejudgment Interest	<u>\$ 517.34</u>	
Total	\$ 5,012.44	

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<sup>3</sup>I have multiplied the interest by 3.67 to account for the three years and 8 months from September 2006 until May 2010.

<sup>4</sup>Rather than a full year of interest, this final calculation is reduced to account for the period of September 2009 through May 2010. Thus the figure is multiplied by 8/12 to account for the eight months.

**B. Morales**

		Interest
Credited OT (FMLA)		
September 30, 2006 - September 30, 2008	\$ 459.06	0
Liquidated Damages for Credited OT (FMLA)		
September 30, 2006 - September 30, 2008	\$ 459.06	0
Credited OT (PMWA - Interest calculated at simple 6%)		
September 30, 2005 - September 30, 2006	\$ 589.31 * .06 * 3.67	\$ 129.77
Uncompensated morning/evening (PMWA - Interest calculated at simple 6%)		
September 30, 2005 - September 30, 2006	\$ 2,018.06 * .06 * 3.67	\$ 444.38
Uncompensated morning/evening (FLSA - Interest using §1961)		
September 30, 2006 - September 2007	\$ 2,018.06	
Compounding Interest		
9/30/06 - 9/30/07	\$ 2,018.06 * 4.05% = \$ 81.73	
9/30/07 - 9/30/08	(\$ 2,018.06 + \$ 81.73)	
	\$ 2,099.79 * 1.95% = \$ 40.95	
9/30/08 - 9/30/09	(\$ 2,099.79 + \$ 40.95)	
	\$ 2,140.74 * .41% = \$ 8.78	
9/30/09 - 5/18/10	(\$ 2,140.74 + \$ 8.78)	
	\$ 2,149.52 * .39% = \$ 8.38 * 8/12 = \$ 5.59	
	\$ 81.73 + \$ 40.95 + \$ 8.78 + \$ 5.59 =	\$ 137.05
Totals for Morales:		
Damages (including liquidated)	\$ 5,543.55	
Prejudgment Interest	<u>\$ 711.20</u>	
Total	\$ 6,254.75	

**C. Roblero**

		Interest
Credited OT (FMLA)		
September 30, 2006 - September 30, 2008	\$ 673.10	0
Liquidated Damages for Credited OT (FMLA)		
September 30, 2006 - September 30, 2008	\$ 673.10	0
Credited OT (PMWA - Interest calculated at simple 6%)		
September 30, 2005 - September 30, 2006	\$ 491.69 * .06 * 3.67	\$ 108.27
Uncompensated morning/evening (PMWA - Interest calculated at simple 6%)		
September 30, 2005 - September 30, 2006	\$ 2,308.60 * .06 * 3.67	\$ 508.35
Uncompensated morning/evening (FLSA - Interest using §1961)		
September 30, 2006 - September 2007	\$ 2,308.61	
Compounding Interest		
9/30/06 - 9/30/07	\$ 2,308.61 * 4.05% = \$ 93.50	
9/30/07 - 9/30/08	(\$ 2,308.61 + \$ 93.50)	
	\$ 2,402.11 * 1.95% = \$ 46.84	
9/30/08 - 9/30/09	(\$ 2,402.11 + \$ 46.84)	
	\$ 2,448.95 * .41% = \$ 10.04	
9/30/09 - 5/18/10	(\$ 2,448.95 + \$ 10.04)	
	\$ 2,458.99 * .39% = \$ 9.59 * 8/12 = \$ 6.39	
	\$ 93.50 + \$ 46.84 + \$10.04 + \$ 6.39 =	\$ 156.77
Totals for Roblero:		
Damages (including liquidated)	\$ 6,455.10	
Prejudgment Interest	<u>\$ 773.39</u>	
Total	\$ 7,228.49	

Judgment in the amounts calculated above is attached.